

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Special Meeting of January 23, 2003

Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: Jim Athearn, Chairman (Elected – Edgartown), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Tristan Israel (Appointed – Tisbury), Deborah Moore (Elected – Aquinnah), Katherine Newman (Appointed – Aquinnah), Megan Ottens-Sargent (Elected – Aquinnah), Paul Strauss (Appointed – County), Richard Toole (Elected - Oak Bluffs), Doug Sederholm (Elected – Chilmark), Linda Sibley (Elected - West Tisbury), Kate Warner -Appointed - West Tisbury), Andrew Woodruff (Elected -West Tisbury)

Staff: Mark London (Executive Director), Jennifer Rand (DRI Coordinator), Bill Wilcox (Water Resources Planner), David Wessling (Transportation Planner), Bill Veno (Regional Planner)

There being a quorum, Jim Athearn, opened the meeting at 7:37 p.m. He introduced Linda Dewitt, the new Selectman's appointee from Edgartown. He also announced that Pia Webster has just been named Executive Secretary of the Town of West Tisbury and will be leaving employment at the Commission in two weeks.

He then passed the gavel to the LUPC Chair, Christina Brown, for her to conduct the Public Hearing.

1. KINGDOM HALL (DRI No. 559) - CONTINUED PUBLIC HEARING

At 7:39, Christina Brown, Hearing Officer, reopened the Public Hearing of Kingdom Hall, being continued from the Public Hearing on January 23,2003.

Commissioners present for the Public Hearing: J. Athearn, C. Brown, T. Israel, D. Moore, K. Newman, M. Ottens-Sargent, P. Strauss, R. Toole, D. Sederholm, L. Sibley, K. Warner, A. Woodruff

Present for the Applicant: Jeffrey Gordon, land use planner and landscape architect; and Jeffrey

Hatcher, architect.

1.1 Applicant's Presentation

Jeffrey Gordon gave the following information about the legal context and the project.

- He is a volunteer professional, president of an engineering and planning firm
- Planning is a responsibility given to municipalities by the Commonwealth. In 1970s, regional planning was introduced to further the greater good. In a similar spirit, in January 2000, the Federal Government passed a law that supersedes the authority even of regional agencies such as the MVC. The Religious Land Use and Institutional Properties Law (he distributed copies to the Commissioners) says that the government cannot impose a substantial burden on the free exercise of religion unless it is in furtherance of compelling government interest.
- A substantial burden is any system that allows looking at individual projects. Even asking for a special permit or a waiver is inherently a special burden.
- The government body can avoid this conflict by changing its policy, by providing an exemption or waiver for religious applicants, or, in the case before the Commission, simply by denying the referral.
- Therefore, this application is exempt from review by the MVC. They came as good neighbors, listened to the Commission's comments, and will determine how to deal without significant impact on the Jehovah's Witnesses.
- The deed restriction will be respected concerning the no-cut zones along State Road and Stoney Hill Road that allow for clearing dead and diseased trees and building a driveway.
- The proposed canopy over the drop-off is important to provide weather protection in bad weather
- The choice of brick for the exterior wall is also important. They have 150 masonry volunteers prepared to assist local congregants and to deny them that right as part of their religious exercise would be in contradiction of the federal law.
- They lowered the lighting levels by reducing the number of poles from 22 to 13.
- They relocated four parking spaces away from the entrance to the parking lot in order to create a buffer and reduce the direct view into the lot from State Road.
- They eliminated the driveway access from Stoney Hill Road except for emergency fire access with a crash gate.
- The proposed new curb cut on State Road is at the safest location and it would be foolish to move it to a less safe location. It is clear in their deed that they have the right to build this driveway.
- The proposed septic system does not require any tree cutting except removal of a few dead or diseased trees.
- They are willing to assist residents to increase the sight line visibility at the exit of Stoney Hill Road by removing some vegetation on their property along State Road.

- Since the Jehovah's Witnesses didn't need to come to the MVC in the first place, he suggested that they could ask for a refund of the \$3,000 application fee.

1.2 Staff Reports

Jennifer Rand clarified the situation with respect to the curb-cut on State Road.

- This property is part of a former DRI that allowed for a driveway along Stoney Hill Road but conditioned against such along State Road. The wording of the deed is incorrect in that it implies there is a possibility of having a driveway on State Road.

Bill Wilcox summarized his section of the staff report.

- The project is in the Greenlands Water Resource Protection District, if it is more than 15% impervious, should have special permit.
- He suggests that roof runoff be dispersed around building and that water runoff from the parking area also not be in one place but be dispersed around lot.
- If the parking lot were to be made lower (to help screen from the road and from abutters), drainage would have to be pitched in other direction.

Mark London spoke about the legal situation.

- He has consulted the Commission's counsel several times, in anticipation of the issues raised by the applicant at tonight's meeting. Counsel indicated that the interpretation of this relatively recent law is not as clear-cut as the applicant indicated.
- It is clear that, notwithstanding the zoning in place, a religious institution *may establish* in any zone and the floor area or interior arrangement cannot generally be limited. However, the question is open to legal debate as to what constitutes a compelling interest that, according to the federal law, warrants limiting the *manner* in which the building is established, for example with respect to issues such as siting, exterior appearance, landscaping and lighting.

Christina Brown suggested that the legal issues would not be settled that evening. Whether the applicant came because they were required to or simply as good neighbors, we were all trying to achieve the best solution for the common good. She thanked them for coming and presenting their proposal.

Tristan Israel said that at the last meeting, issues were being discussed as good neighbors. Tonight's presentation was very confrontational. He suggested trying to work out a good solution first, and if it goes down another road, so be it.

Linda Sibley said that since everyone was already here, we should go on with the hearing. If any

legal work needs to be done, our attorney should do it.

David Wessling finished the staff report with his section.

- There had been a site visit this morning with members of the West Tisbury Planning Board. They examined how the Stoney Hill Road entrance could be made safer, and looked at the possibilities of creating a new curb cut on State Road or using the ancient way.
- The consensus appeared to be that the first choice was to use the Ancient Way, the second choice was Stoney Hill Road, and the third choice was a new curb cut.

1.3 Testimony from Public Officials and Town Boards

The **West Tisbury Planning Board** sent a letter subsequent to visit held earlier this day, copies of which were distributed to Commissioners. Linda Sibley summarized the key points. They do not support a new curb cut but were not explicit as to which of the alternatives they prefer. They favor a wide buffer, a smaller canopy, and limited lighting.

1.4 Public Testimony in Favor of the Proposal

There was none.

1.5 Public Testimony Opposed to the Proposal

Shelton Bank is Co-chair of the West Tisbury Open Space Committee read a letter into the record. His desire is to achieve the best possible solution for everyone.

- Many surveys of Town and Island residents have indicated that the preservation of the rural character of the Island is one of everyone's highest priorities, especially the natural roadside vistas.
- He visited the site with a civil engineer who suggested that by removing a few trees at Stoney Hill Road, there would be adequate visibility in both directions. Proposed location of the new curb cut has less visibility from Down-Island. He asked that there be no new curb-cut on State Road.
- From a traffic flow point of view, there is benefit in village situation for having many curb-cuts, but between villages, flow is impeded by having many entrances. From a safety point of view, evidence indicates that having more entrances is more dangerous. From the point of view of preserving rural character, the one thing that every Islander and visitor has in common is that they use the roads. The perception of open space depends on space between buildings and driveways. If there are too many buildings and driveways, it gives the impression of suburbia.



Juleann Vanbelle lives across road.

- She was disappointed, after all the talk of being good neighbors, to have such a confrontational, threatening presentation tonight.
- If clapboard was an acceptable material in Vineyard Haven, why is it not acceptable in West Tisbury? If one of the reasons for brick is to allow them to have more time to ring doorbells, she hoped the federal government was also concerned about her privacy and about people coming onto her property.
- If the legislation on religious buildings is like federal regulations on cell towers, the local authority still has some control over how they are installed.
- It has been generally assumed that this project is not subject to the provisions with respect to affordable housing, since it is a tax-free property. However, everyone has an impact on affordable housing in some way and the Jehovah's Witnesses should respond to this issue. Perhaps there could be a condition that they donate time to Habitat to Humanity.
- Since this project will be in a rural residential area, what will happen if they ever sell the property? The design should be appropriate for a house, a school or a church so there is no attempt to use it for other purpose. As presently designed, it would only be good for church or for a commercial use.

Anthony Anvarondo lives on Joe Viera Road.

- Since half of Joe Viera Road is on his property, he wanted to know whether the applicant could use it. Jennifer Rand replied that they could.
- He was concerned about the use of brick simply because they have masons. He asked whether the Jehovah's Witnesses couldn't get people that do shingles, which would fit into the character of the area. He said that he didn't move to West Tisbury to look at brick buildings.

Joseph Turney lives on Stoney Hill Road.

- He wasn't against the church until this meeting. Now he hears the Jehovah's Witnesses saying that this is the way it's going to be and tough luck.
- He asked them to change the material to clapboard because that's what you do to be a good neighbor. He realized that the federal law may protect them, but the community will get a bad feeling about this project if it goes ahead as is because of threatened lawsuits.

Heidi Feldman is manager of the Stoney Hill Road Association.

- As long as she was a member of road association, the aim was to keep the road passable for neighbors.
- Denuding the landscaping at the entrance on State Road would not be an advantage. There already is a bus stop. It would be better to leave it alone. It is a little tough to get out of, but so are lots of roads on the Island.

1.7 Questions from Commission Members

Doug Sederholm asked how elimination of the new curb cut on State Road would substantially burden the congregation in the exercise of their religion. Jeff Gordon replied that it would take away the individual identity of site. Also, the Stoney Hill Road Association would not want the increased liability of having the public using the road. People would have to drive around the whole parking lot to drop people off at the front door. The new curb cut provides for a better layout for interior circulation. He did not want to debate the relation of each issue to the exercise of religion and repeated that the individualized assessment is in itself a burden.

Andrew Woodruff asked whether, with a building parallel to Stoney Hill Road and set back 75 feet, it would not be possible to have essentially the same traffic circulation, with an L-shaped parking lot. Jeff Gordon replied that the present lot was the most efficient so any other layout would increase impervious area that was already over the limit. An individualized, properly lit entry with a good sign would make it easier to find. They wanted to have the parking directly off State Road.

Doug Sederholm asked whether there are any other Kingdom Halls in materials other than brick. What about the one in Mashpee? Jeff Hatcher said that the last one in a material other than brick was built prior to 1990 and he believes that the one in Mashpee was built before then. Jeff Gordon said that he has a vinyl siding crew for gable ends and he could make the whole building in vinyl siding, but that would not be better.

Tristan Israel asked whether they were saying that they would not make any changes and wanted to know what was negotiable. Jeff Hatcher said that they do not do custom architecture because they bring a crew in and they are trained to build in a certain way. There was a number of things that they could do. They could make the columns in wood or Fipon, they could make the small gable areas – now in composite shakes – in real wood shakes provided they were able to assemble a crew from Vermont that is able to do this. In a recent project, they moved some windows to the far end of the building, to make it look more residential. Jeff Gordon said they felt very strongly about the separate curb cut. Using Joe Viera road does not make sense and would be a drainage problem.

Deborah Moore felt this was a very changed presentation from before and suggested that now that the applicant had heard the concerns, it might be a good idea to take a break so the applicant could consider how they could best respond.

Jeff Hatcher said that as good neighbors, they do not want to use Stoney Hill Road or Joe Viera Way. They have made concessions and done everything that they could do. They had been asked to give up air conditioning and to get rid of the canopy and that was not fair. They were asked for more planting and are prepared to provide it and plant extra trees. They only brought out the law because they felt they had been pushed into a corner; the congregation wants to be a good neighbor.

Mark London said that the drainage issue involved in using Joe Viera Way did not appear to be major. He pointed out that no one had ever asked them to eliminate the air conditioning; on the contrary, during a meeting with the applicant, he had simply pointed out that since energy conservation is always a concern, the proposed presence of windows on both sides of the meeting room means that the cross-ventilation would be good and this might lead to less use of air conditioning. He asked whether the applicant had looked at ways to mitigate brick, for example the West Tisbury Post Office was covered with ivy. He noted that no building on that

stretch of State Road is in a material other than wood and no recent building is set back as little as 50 feet.

Tristan Israel said that no decision has been made yet. Commissioners are simply asking questions and raising concerns.

Andrew Woodruff said the discussion is not about religious expression, it is about site design. He views the plan as having changed little since it was first brought before the Commission. He is concerned that, with only a 50-foot setback, the size and scale will pose a real problem and it is not unreasonable to look at an alternative site design.

Jeff Gordon agreed with the suggestion to take a recess to allow the applicants to see what could be done to further mitigate the proposal.

Christina Brown declared a recess to the Hearing at 9:07 and resumed the Hearing at 9:17.

Christina Brown asked whether there were any more Commissioner questions and assured the applicant that there would be a chance at the end to answer all questions and to offer a wrap-up.

Megan Ottens-Sargent asked what the local zoning requirements were for parking and asked, if the building were set farther back, whether the parking could be dug down so as to be not so visible? David Wessling replied that the minimum parking is 1 space for each 4 seats; there will be 150 seats so they need a minimum of 40 spaces. The proposal was to have 62 spaces. Mark London indicated that the West Tisbury Planning Board generally suggests that for this type of sporadic use where the full capacity of the lot is used only a few hours a week, it is better to start out with fewer formal spaces and plan for occasional parking on the grass.

Megan Ottens-Sargent asked the applicant to respond to the suggested conditions dealing with drainage. Jeff Gordon said that if there is more than 15% of impervious area, so it requires a special permit. He agrees with the idea of dispersing the roof water into infiltrators. They have already planned to disperse the parking lot runoff to help recharge.

1.8 Applicants' Closing Remarks

Jeff Gordon responded to questions that had been raised.

- He apologized if people felt that his presentation was confrontational. When they first applied to West Tisbury, they explained the law. When he learned that that had not been done at the Commission's first session of this Public Hearing, he felt he needed to explain the law. In other localities, the Boards or Commissions simply give an exemption and ask the staff to work out details.
- The FCC has clarified their right to ring doorbells.
- The idea of a condition requiring them to donate time to Habitat for Humanity is exactly why the law was written – to prevent taxing religion.
- In terms of site access, the proposed curb cut is at right angles to the road, limiting the visual impact of the parking lot. If there were a diagonal entrance from Joe Viera Road, it could create an even more open vista. There will be a planted berm along State Road that

will provide for understory under the canopy of trees. They would add evergreens to the location where the four cars had been removed at the entrance to the site, to reduce or eliminate the direct view into the parking lot. The parking lot could not be lower because it would cause drainage problems. They had looked at all the options for access and are convinced that their proposal is the best solution.

- With respect to the building, they were now prepared to offer two possibilities:
 - They could move windows to the end wall and the local congregation could add wooden trelliswork and arbors after the regional group had finished construction of the brick building, or
 - If there is a quick decision by the Commission, they would be prepared to make it a cedar-shingle building.

Tristan Israel said that he very much appreciates this offer.

Hearing Chairman Christina Brown closed the Public Hearing at 9:30 p.m. The Written Record will be kept open until 4:30 p.m., Monday, January 27, 2003. She noted that the Land Use Planning Committee would meet at 5:30 p.m. that same date and encouraged all commissioners to come so that it would be possible to give a preliminary indication to the applicant that evening with the final decision scheduled for February 6, 2003.

2. MINUTES OF PREVIOUS MEETINGS

It was moved by Tristan Israel and duly seconded that the minutes of the Commission meeting of November 21, 2002 be adopted. Voice vote. In favor: 10. Opposed: 0. Abstentions: 5. The motion carried.

It was moved by Tristan Israel and duly seconded that the minutes of the Commission meeting of December 5, 2002 be adopted. Voice vote. In favor: 10. Opposed: 0. Abstentions: 5. The motion carried.

It was moved by Richard Toole and duly seconded that the minutes of the Commission meeting of December 12, 2002 be adopted.

- Jim Athearn pointed out that on page 19 the minutes refer his comment of people driving towards Oak Bluffs and end with the words "he joked". It should say "he said".

Voice vote on the minutes as amended. In favor: 10. Opposed: 0. Abstentions: 5. The motion carried.

3. SUPERNATURAL HEALTH FOOD STORE (DRI No. 430M-2) CONCURRANCY VOTE

Commissioners present for the Public Hearing: J. Athearn, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, M. Ottens-Sargent, P. Strauss, R. Toole, D. Sederholm, L. Sibley, K. Warner, A. Woodruff.

Present for the applicant was Justin Ahren, husband of the owner Sara Ahren.

Christina Brown, Chair of the Land Use Planning Committee, reported that the committee had met on January 13, 2003 to discuss this project. The Commissioners present at LUPC noted that the proposal consisted of a minor interior change whereby 600 square feet in the store

would be converted from retail to a juice bar with a total of 12 seats at two counters and one table. The building has more than enough parking and did not impact any of the issues raised in the original decision. LUPC unanimously agreed to recommend that the Commission not concur with the referral.

Justin Ahren explained that he had done a brief parking study with the assistance of David Wessling and that the demand would only be a few of additional spaces. There are 16 spaces for customers and 4 for the apartments.

Tristan Israel was concerned about vagueness. If it allows for takeout food, how is it different from Louis' Café? Presently, the intersection with State Road is horrendous.

Linda Sibley noted that their peak time does not correspond to the peak hours of traffic. She is there often and the lot is never full. She felt that this is a small change to a small business.

Megan Ottens-Sargent noted the distinction between a takeout and a sit down restaurant. She asked whether it would go to town boards. Jennifer Rand confirmed that it would go to the Board of Health and the Building Inspector.

It was moved by Linda Sibley and duly seconded that the Commission not concur with the Referral, that the Modification being proposed was not significant and that it did not require a full Public Hearing.

- **Linda Sibley** noted that any additional change would have to come back and be compared to the original approval.

Voice vote. In favor: 14. Opposed: 0. Abstentions: 1. The motion carried.

It was moved by Christina Brown and duly seconded that the Commission accept the revised Plan for Supernatural consisting of the drawing dated December 2, 2002, thereby modifying the original decision on the project (DRI No. 430). Roll call vote. In favor: J. Athearn,, C. Brown, J. Greene, T. Israel, D. Moore, K. Newman, M. Ottens-Sargent, A. Schweikert, D. Sederholm, L. Sibley, P. Strauss, R. Toole, K. Warner A. Woodruff. Opposed: none. Abstentions: L. DeWitt. The motion carried.

4. EXECUTIVE COMMITTEE REPORT

Jim Athearn reported on the Executive Committee meeting that had taken place earlier in the evening.

4.1 Committees and Commission Meetings

Jim Athearn reported that the Executive Committee had agreed to the following approach.

- The full Commission should meet on the first and third Thursday of each month, as well as on the second Thursday if necessary. However, it should never meet on the fourth Thursday, except in emergencies, in order to allow Commissioners and staff to plan trips Off-Island.

- The Planning and Economic Development Committee should have a set membership of interested members, each taking on an individual area of responsibility (such as open space and environment, traffic and transportation, economic development and affordable housing, and scenic values). Commissioners were asked to express their interest in membership to Richard Toole or Megan Ottens-Sargent. For the next few meetings, staff will review recent and ongoing planning work to bring everyone up to speed. The meetings will take place on the third Thursday of each month, from 6:00 to 7:15 p.m.
- The Commission should work on guidance documents for DRIs to help applicants understand what the Commission's concerns are. Christina Brown, Mark London and Jennifer Rand will start working on some proposals in relation to the general report on the Commission that Mark London is working on.

4.2 Ferry

- **Jim Athearn** reported that the Executive Committee suggests that the Executive Director prepare a statement for the forum being held the following week on the proposed new ferryboat. The general thrust would be that the idea of larger boats making fewer trips might be desirable provided that the overall capacity continues to be restricted to the 1995 limit.
- **Tristan Israel** has serious reservations about the new boat, particularly the traffic impact. He is concerned that with larger boats, there will be economic pressures use it to full capacity unless there is a way to place real controls in hands of the Island community to ensure that capacity limit is respected.
- **Linda Sibley** said that the best-case scenario was that the SSA could get rid of some freight boats and have more efficient system with the same capacity. Since we cannot stop the SSA from buying boats, having some larger, faster boats could be better. This should not be used to expand the overall capacity. However, it appears that there is nothing we can say that will be enforceable.
- **Paul Strauss** said that the traffic problems were only with the larger boats; can additional cars disembarking in Vineyard Haven be tolerated?
- **Andrew Woodruff** noted that when the second slip was built, the SSA said it would only be used in emergencies, but it has ended up being heavily used and this has had a big impact on the Island.
- **Tristan Israel** said that there are other implications such as cost and wondered whether we should invite SSA representatives to present the project to the MVC, thereby giving the community another chance to see what was going on. The MVC is often at the back end of regional issues and we should weigh in.
- **Megan Ottens-Sargent** said that with respect to the input for Thursday's meeting, Mark should be asked to deliver a statement of regional concerns.
- **Jim Athearn** said that we could decide whether to add the issue to the MVC agenda after the forum. He asked Mark to present a simple statement focused on potential increased capacity to the SSA forum.
- **Paul Strauss** noted that the SSA will hold another Open House in March. He felt that the MVC has responsibility to learn what the public feels and articulate it in meaningful way.

- **Richard Toole** recalled that the SSA had given a great presentation at the Oak Bluffs School with Armand Tiberio. Some people only care if they can get a reservation whereas other people realise that an increased capacity could result in a great increase in traffic.
- **Kate Warner** suggested that we stick to the traffic issue.
- **Pia Webster** noted that the Commissioners were given the full minutes of the SSA forum held last year.
- **Linda Sibley** felt that the role of the MVC, and particularly that of staff, is to produce for the community an analysis of the impacts of these options: the costs and benefits, the effect on traffic and on the cost of tickets. The Commission's role is to organize information, hold our session and educate the public so they can make better choices.

4.3 Guidance on Project Modifications

- **Jim Athearn** read a proposed guidance document – *Guidance as to When Changes to an Approved Project Necessitate a Request to the Martha's Vineyard Commission for a Modification or Amendment to the DRI Decision, January 28, 2003* – that would clarify when changes to an approved DRI project must be brought back and approved by the Commission. The Executive Committee had reviewed the document.
- **Linda Sibley** suggested that the wording be changed to refer not only to building inspector but also to any permit-granting authority.

It was moved by Kate Warner and duly seconded that the proposed guidance document be adopted with the amendment proposed by Linda Sibley and that it be sent to the six towns. Voice vote. In favor: 15. Opposed: 0. Abstentions: 0. The motion carried.

5. UPCOMING LUPC MEETINGS AND SITE VISITS

Deborah Moore reminded everyone that the Jehovah's Witnesses are anxious to have an answer as soon as possible about the Kingdom Hall application, and she urged as many Commissioners as possible to attend next Monday's LUPC meeting.

Jennifer Rand reminded everyone of the site visit for the Fialkow House next Saturday at 11am.

Pia Webster reported that Commissioner John Best had broken his hip. It was a clean break and he can already stand up. He will miss the LUPC meetings and the site visit but expects to come to the Commission meeting in two weeks.

Mark London announced the organization of a joint meeting of the Cape and Islands' regional planning agencies following up the one in Hyannis a year ago. The Vineyard will be hosting this time. Commissioners requested the session not be held on the weekend.

The Meeting adjourned at 10:45 p.m.

Chairman

Date

Clerk-Treasurer

Date